Kok Keat & Anor v Pentadbir Tanah Daerah Petaling

HIGH COURT (SHAH ALAM) — CIVIL APPLICATION NO 15-3-92
KC VOHRAH J
29 SEPTEMBER 1994

Land Law *— Acquisition of land — Market value — Development potential — Usage at time of valuation and in future — Visibility from highway — Real likelihood of creating access to public road — Whether to be taken into account*

Land Law *— Acquisition of land — Methods of valuation — Whether transactions of similar land in vicinity relevant — Whether transactions taking place after notification of acquisition can be considered*

Land Law *— Acquisition of land — Loss of fruit trees — Surveyor's fees — Whether compensation claimable*

The objectors appealed against the amount of compensation awarded to them in respect of land ('the land') which was compulsorily acquired by the government. The land was an agricultural lot situated in the midst of an industrial area with no authorized access from the Federal Highway. The government valuer took the view that the land only had development potential if there was proper access and, therefore, valued the land at RM930,330, ie RM7.95 per sq ft, by comparing it to two lots of land which were 3km and 5km away because of their close proximity to light industry zones. There were two other lots, ie Lots 252 and 47, nearer and more similar in nature to the land, which were transacted at RM9 and RM19 per sq ft, respectively, but these were not considered by the government valuer. In any event, Lot 252 was transacted soon after the date of intended acquisition of the land. The objectors also sought compensation for the loss of fruit trees on their land and reimbursement of their surveyor's fees.

Held, increasing the award of compensation to RM1,112,136:

(1) In view of its developmental potential as an industrial lot, the land had to be given a market value which reflected the use to which it was being put at the time of valuation and to which it was reasonably capable of being put in the future. The value should also take account of the high visibility of the land from the Federal Highway.

(2) The owners of the land could apply for the creation of a land administrator's right of way to give access to a public road under s 390 of the National Land Code 1965 and, therefore, the real likelihood of having a right of way created to a public road had to be positively viewed.

(3) Although the transaction involving Lot 252 was a post-notification transaction, consideration should be given to its value as it gave an indication whether the value given for the land was fair or not.

(4) The claim for loss of fruit trees failed as the value of the land on account of its building potential was an inclusive rate and nothing could be allowed in addition for trees.

(5) The claim for reimbursement of surveyor's fees also failed as there was nothing in the Land Acquisition Act 1960 to justify the inclusion of such a fee.

[Bahasa Malaysia summary

Penentang telah membuat rayuan terhadap jumlah pampasan yang telah diaward kepada mereka untuk tanah ('tanah itu') yang telah diambil secara wajib oleh pihak kerajaan. Tanah itu merupakan suatu lot pertanian yang terletak di tengah-tengah suatu kawasan perindustrian, tanpa jalan masuk yang sah dari Lebuhraya Persekutuan. Penilai kerajaan berpendapat bahawa tanah itu hanya mempunyai potensi pembangunan jika terdapat suatu jalan masuk yang sah dan dengan itu menilaikan tanah itu pada jumlah RM930,330, iaitu RM7.95 sekaki persegi, dengan membandingkannya dengan dua lot tanah yang terletak 3km dan 5km jauhnya masing-masing dari tanah itu kerana dua lot itu berdekatan dengan zon perusahaan ringan. Terdapat dua lot yang lain, iaitu Lot 252 dan Lot 47, yang terletak lebih dekat kepada tanah itu dan mempunyai sifat yang lebih menyerupai tanah itu, yang telah diuruskan pada harga RM9 dan RM19 sekaki persegi masing-masing, tetapi mereka tidak dipertimbangkan oleh penilai kerajaan. Bagaimanapun, Lot 252 telah diuruskan tidak lama selepas tarikh tanah itu dirancang untuk pengambilan. Penentang juga cuba mendapatkan pampasan untuk kehilangan pokok buah-buahan di atas tanah mereka itu dan bayaran ganti fee juruukur mereka.

Diputuskan, menaikkan award pampasan itu kepada RM1,112,136:

(1) Memandangkan potensi pembangunan tanah itu sebagai suatu lot perindustrian, tanah itu mesti diberikan suatu nilai pasaran yang menggambarkan penggunaannya pada masa penilaian dan tujuan untuk mana tanah itu dengan munasabahnya boleh digunakan pada masa hadapan. Nilai itu juga seharusnya mengambil kira darjah penglihatan tinggi tanah itu dari Lebuhraya Persekutuan.

(2) Pemunya tanah itu boleh memohon supaya suatu hak lalu-lalang pentadbir tanah diwujudkan untuk memberi laluan kepada suatu jalan awam di bawah s 390 Kanun Tanah Negara 1960 dan oleh itu, kemungkinan besar bahawa suatu hak lalu-lalang kepada suatu jalan awam akan diwujudkan mesti dilihat secara positif.

(3) Walaupun urusan yang melibatkan Lot 252 adalah urusan yang dijalankan selepas pemberitahuan tentang pengambilan itu, pertimbangan patut diberikan kepada nilainya kerana ianya memberikan suatu petunjuk sama ada nilai yang diberikan untuk tanah itu adalah adil atau tidak.

(4) Tuntutan untuk kehilangan pokok buah-buahan itu gagal kerana nilai tanah itu yang berdasarkan potensi pembangunannya adalah suatu kadar yang merangkumi semua dan tidak ada apa-apa yang boleh diberikan sebagai tambahan untuk pokok. A

(5) Tuntutan untuk bayaran ganti fee juruukur itu juga gagal kerana tidak terdapat apa-apa di dalam Akta Pengambilan Tanah 1960 untuk menjustifikasikan penyertaan suatu fee seperti itu.] B

Notes

For cases on market value of land, see 8 *Mallal's Digest* (4th Ed) paras 898–912, 947–951; [1992] Mallal's Digest 1178–1180. C

For cases on methods of valuation, see 8 *Mallal's Digest* (4th Ed) paras 913–914, 952–958; [1993] Mallal's Digest 943.

Cases referred to

Assistant Development Office v Tayaballi AIR 1933 Bom 361 (refd)

Collector of Thana v Chaturbhuj Radhe Krishna AIR 1926 Bom 365 (folld) D

Consolidated Plantation Bhd v Pemungut Hasil Tanah Kelang [1984] 1 MLJ 273 (not folld)

Highlands Malaya Plantations Ltd v Collector of Land Revenue, Petaling [1981] CLJ 174 (folld) E

Loong Heng Sun v Collector of Land Revenue, Kedah [1992] 3 CLJ 1612 (folld)

Pemungut Hasil Tanah, Seberang Perai Utara, Butterworth v Bertam Consolidated Rubber Co Ltd [1990] 1 MLJ 268 (folld)

Si Rusa Inn Sdn Bhd & Ors v Collector of Land Revenue, Port Dickson & Ors [1987] 1 MLJ 147 (folld) F

Tharreesamma v Deputy Collector, Cochin AIR 1924 Mad 252 (folld)

Legislation referred to

Land Acquisition Act 1960 s 8

National Land Code 1965 ss 389, 390 G

KS Ong (*KS Ong & Co*) for the objectors.

Zaharah Ibrahim (State Legal Adviser) for the respondent.

Cur Adv Vult H

KC Vohrah J: In this case the subject lot, Lot 305, is bordered in the south by a strip of railway reserve land on which runs a railway track, in the north by the Federal Highway with no authorized access to the subject lot, in the west by Lot 306 and in the east by Lot 313. Next to Lot 313 is Lot 304, after which there is a public road, Jalan Puchong. I

That at the time of the date of the declaration of intended acquisition under s 8 of the Land Acquisition Act 1960 in the Selangor State Gazette Notification No 759, ie 26 September 1990, the subject lot, an agricultural

A lot situated in Mukim Damansara, Daerah Petaling was in the midst of an industrial area, is not disputed. On the subject lot, a motor cycle workshop was located and access to the workshop appeared to be from the Federal Highway, albeit, it was an unauthorized access.

The collector, on 28 December 1991, valued the subject lot, B trapezoidal in shape and measuring 117,067sq ft (2.6875 acres), at RM930,330 which works out to RM7.95 per sq ft. The government valuer, PW1, had compared the subject lot to Lot 973 and Lot 550 in the same mukim and daerah to arrive at the value of RM7.95 per sq ft for the subject lot. But Lot 973, an odd-shaped piece of land (transacted on 5 September 1991 at RM7.35 per sq ft), and Lot 550 (transacted C on 22 November 1990 at RM7.57 per sq ft) were 3km and 5km away, respectively, from the subject lot although both were agricultural lots. They had potential for industrial use as claimed by the government valuer because of their close proximity to light industry zones but the fact remains that there were two other lots which were so much nearer to the subject lot D and which were transacted quite close in time to the subject lot and they were definitely, like the subject lot, in an industrial area. These two lots, Lot 252 (transacted in November 1990 at RM9 per sq ft) and Lot 47 (transacted in October 1989 at RM19 per sq ft), which the private valuer took into consideration, were more similar in nature to the subject lot than the two lots used by the government valuer for comparison.

E Lot 47 was an industrial lot and its proximity to the subject lot should have given an indicator to the government valuer that land values were by no means as low as those lots taken by her as comparable lots. However Lot 252 was the better lot for comparison. As was pointed out earlier, the date of the declaration for intended acquisition for the subject F lot was 26 September 1990 and Lot 252 was a post-notification transaction, it having taken place in November 1990. In *Loong Heng Sun v Collector of Land Revenue, Kedah* [1992] 3 CLJ 1612 at p 1615, I had occasion to observe as regards reliance on post-notification transactions (basing my observation on *Assistant Development Office v Tayaballi* AIR 1933 Bom 361) the following:

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> There may be other reasons for attaching little or no value to post-notification transactions, and that would depend on the peculiar circumstances of each case but ordinarily if post-notification transactions are close in time to the valuation date of the scheduled land and the lots possess features which are more or less similar to the lot of which the scheduled land forms part, such H transactions do afford a pointer as to whether the value given for the land compulsorily acquired is fair or not.

Now Lot 252 was transacted barely two months after notification of the intended acquisition of the subject land and the government valuer who prepared her report on 12 December 1991 should have been aware of the I transaction. She would have noticed that Lot 252 was an agricultural lot and that it was near to the subject lot and that it had potential for development in the industrial area in which the subject lot and Lot 47 were located. The said transaction at RM9 per sq ft does appear to afford a fair criterion of the value of the subject property on the date of acquisition and

account should also have been taken of the high visibility of the subject lot from the Federal Highway.

The single apparent disadvantage the subject lot had at the date of acquisition when compared with Lot 252 was that there was no proper and authorized access from anywhere outside its borders to the said land. The government valuer, while acknowledging that the area round the subject lot was an industrial area with the Hi-Tech Industrial Park and the Kawasan Perumahan Section 15, Shah Alam situated therein, was of the view that the subject lot had potential for development if there was access from the Federal Highway. But with respect, the government valuer failed to realize that application could have been made by the owners of the subject lot for the creation of a land administrator's right of way to give access to a public road under Pt 28 of the National Land Code 1965 ('the Code'). There could be an application under s 390 of the Code for the creation of the land administrator's right of way through Lots 313 and 304 to the public road running along the eastern border of Lot 304, Jalan Puchong, which would have allowed the proprietors of the said land and persons acting with the express or implied consent of the proprietors to pass or repass between the said two lots and the public road (see s 389 of the Code). The land administrator would need to hold an inquiry under s 390(3) and he, 'if ... he is satisfied that it is expedient for a private ... right of way to be created, shall make an order creating the right of way'. I think in all the circumstances of the subject lot being cut off on all sides, the real likelihood of having a right of way created on the two lots to the public road had to be positively viewed bearing in mind the example used by Peh Swee Chin J in the case of *Si Rusa Inn Sdn Bhd & Ors v Collector of Land Revenue, Port Dickson & Ors* [1987] 1 MLJ 147 at p 153:

> Looking at the said collector, it is difficult also to imagine a less urgent necessity or situation than that before the said collector. It is neither desirable nor easy to specify such urgent or grave situations. I feel I ought to give an example at least. It is conceivable that in the old days when agricultural land was sub-divided, no provision was ever made for surrender of portions of land for road reserve for access to a public road from land-locked interior lots, with the result that should the owners of lots with frontage to such public road decide to seal up their borders or boundaries, some occupiers would be completely denied any access at all to such public road. There is thus an urgent necessity, or a grave situation which would make it expedient for a Collector to grant a right of way against those favourably-placed landowners, against the principle of inviolateness of land.

In my view, Lot 305, in view of its developmental potential as an industrial lot, had to be given market value which 'reflect[s] not only the value by reference to the use to which the land was being put at the time at which its value is to be determined, but also by reference to the use to which the land is reasonably capable of being put in the future' (see *Highlands Malaya Plantations Ltd v Collector of Land Revenue, Petaling* [1981] CLJ 174). And the value should also take into account its high visibility from the Federal Highway. In my view, the award should be increased to RM9.50 per sq ft.

A The objectors have claimed for compensation for the loss of fruit trees on the subject lot. The claim must necessarily fail bearing in mind that 'if the court puts a fictitious value on the property on account of its so-called potentiality for building purposes, then it is an inclusive rate and nothing can be allowed in addition for trees' (*Collector of Thana v Chaturbhuj Radhe Krishna* AIR 1926 Bom 365). In *Tharreesamma v Deputy Collector, Cochin* AIR 1924 Mad 252, it was held that when agricultural land in the vicinity of commercial quarters is valued as a building site, the owner is not entitled to the value of the trees on the ground that they are fruit-bearing trees.

The objectors have also argued that they are entitled to reimbursement C of surveyor's fees incurred by them in the proceedings before the collector and rely on *Consolidated Plantation Bhd v Pemungut Hasil Tanah Kelang* [1984] 1 MLJ 273, a Federal Court decision. I am however bound by the decision of the then Supreme Court in *Pemungut Hasil Tanah, Seberang Perai Utara, Butterworth v Bertam Consolidated Rubber Co Ltd* [1990] 1 MLJ D 268 at p 272 where Harun Hashim SCJ stated:

> The learned judge ordered reimbursement of surveyor's and engineer's fees incurred by the respondents in the objection proceedings to the award of the collector under s 14(5) and on the authority of *Consolidated Plantation Bhd v Pemungut Hasil Tanah Kelang* [1984] 1 MLJ 273. It is true that an award of surveyor's fee at 1% (amounting to RM104,740) was made in that E case but as there was no appeal on that part of the award, the Federal Court did not deal with it. The claim for surveyor's fees, however, was dealt with by the Supreme Court in *Harrisons & Crosfields (M) Sdn Bhd v Pemungut Hasil Tanah, Wilayah Persekutuan* [1988] 2 MLJ 299 at p 300 where such a claim was dismissed on the ground that there is:
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> F > '... nothing in the provisions of the Land Acquisition Act 1960 and the schedule thereto to justify the making of an award to include the surveyor's fee. *Consolidated Plantation Bhd v Pemungut Hasil Tanah Kelang* is not an authority for allowing the surveyor's fee as the Federal Court judgment clearly states that it was confined only to the question of adequacy of the award of RM231,000 as the cost of turfing as G > compensation for the loss of water supply to the mill.'
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> We would accordingly allow this part of the appeal.

In all the circumstances of the matter, my view is that the collector's award should be increased to RM1,112,136. The objectors are entitled to the costs of these proceedings. There shall be a refund of the deposit paid by H the objectors.

Order accordingly.

Reported by Anne Khoo

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